

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHELBY TYRONE CLARK, JR.,
Plaintiff,

V.

LT. BROOKE ALBERT, et al.,
Defendants.

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CIVIL ACTION NO. 21-CV-4096

ORDER

AND NOW, this 20th day of October, 2021, upon consideration of Plaintiff Shelby Tyrone Clark, Jr.'s Motion To Proceed *In Forma Pauperis* (ECF No. 1), Prisoner Trust Fund Account Statement (ECF No. 3), and *pro se* Complaint (ECF No. 2), and for the reasons stated in the accompanying Memorandum, it is **ORDERED** as follows:

1. Mr. Clark's Motion To Proceed *In Forma Pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915;
2. Shelby Tyrone Clark, Jr., # 0205753, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Lehigh County Jail or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Mr. Clark's inmate account; or (b) the average monthly balance in Mr. Clark's inmate account for the six-month period immediately preceding the filing of this case. The Warden of Lehigh County Jail or other appropriate official shall calculate, collect, and forward the initial payment

assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Clark's inmate trust fund account exceeds \$10.00, the Warden of Lehigh County Jail or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Mr. Clark's inmate account until the fees are paid. Each payment shall refer to the docket number for this case;

3. The Clerk of Court is directed to send a copy of this Order to the Warden of Lehigh County Jail;

4. The Complaint is deemed filed;

5. For the reasons stated in the Court's Memorandum, and pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), the Court determines as follows:

a. All due process claims concerning Mr. Clark's misconduct hearing are **DISMISSED WITH PREJUDICE**;

b. All equal protection claims are **DISMISSED WITHOUT PREJUDICE**; and

c. The Court holds in abeyance the resolution of state law claims;

6. On or before November 19, 2021, Mr. Clark may file an amended complaint. Any amended complaint must identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint and shall state the basis for Mr. Clark's claims against each

defendant. The amended complaint shall be a complete document that does not rely on the initial Complaint or other papers filed in this case to state a claim. When drafting his amended complaint, Mr. Clark should be mindful of the Court's reasons for dismissing the claims in his initial Complaint as explained in the Court's Memorandum. Mr. Clark may not reassert claims that have already been dismissed with prejudice. Upon the filing of an amended complaint, the Clerk shall not make service until the Court so orders;

8. The Clerk of Court shall send Mr. Clark a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Mr. Clark may use this form to file his amended complaint if he chooses to do so;

9. If Mr. Clark does not wish to amend his Complaint and instead intends to stand on his Complaint as originally pled, he may file a notice with the Court on or before November 19, 2021, stating that intent, at which time the Court will issue a final order dismissing the case. Any such notice should be titled "Notice to Stand on Complaint," and shall include the civil action number for this case; and

10. If Mr. Clark fails to file any response to this Order, the Court will conclude that Mr. Clark intends to stand on his Complaint and will issue a final order dismissing this case. Such an order will dismiss Mr. Clark's federal law claims with prejudice and any state law claims without prejudice for lack of subject

matter jurisdiction so that Mr. Clark may pursue his state law claims in an appropriate state court.

BY THE COURT:

/s/ Joshua D. Wolson

JOSHUA D. WOLSON, J.